

General Information Letter: Corporations qualified to do business in Illinois must file returns for each year that they are required to file federal income tax returns.

July 8, 2003

Dear:

This is in response to your follow-up letter dated April 28, 2003, in which you request a Letter Ruling. Department of Revenue ("Department") regulations require that the Department issue only two types of letter rulings, Private Letter Rulings ("PLRs") and General Information Letters ("GILs"). PLRs are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. GILs do not constitute statements of agency policy that apply, interpret or prescribe the tax laws and are not binding on the Department. For your general information, the regulation governing the issuance of letter rulings, 2 Ill. Adm. Code Part 1200 regarding rulings and other information issued by the Department, can be accessed at the Department's website. That address is www.revenue.state.il.us/legalinformation/regs/part1200.

The nature of your question and the information provided require that we respond only with a GIL. In your letter you state as follows:

We are writing on behalf of our client, Florida Corporation A. Our client would like to receive a determination of Nexus in Illinois.

The facts are as follows:

- A. The shareholders of Florida Corporation A are also shareholders in Florida Corporation B. Florida Corporation B has one employee in Illinois.
- B. Florida Corporation A processes the payroll through an employee leasing service for the employee of Florida Corporation B under Florida Corporation A's Federal Employer Identification Number.
- C. Florida Corporation A is reimbursed by Corporation B for all costs associated with the payroll. They do not receive any fees for this service. The payroll is processed in this manner to minimize the administrative cost associated with hiring an independent firm to process payroll for one employee.
- D. The payroll is processed in this manner to minimize the administrative cost associated with hiring an independent firm to process payroll for one employee.
- E. The business office and all associated functions of Florida Corporation A take place in Florida. Florida Corporation A also has nexus in Wisconsin where they maintain their inventory.

Does our client, Florida Corporation A, have Nexus in your state?

What filing requirements, if any, does our client, Florida Corporation A, have with regard to corporate income tax?

In response to your inquiry, please be advised that the determination of whether a taxpayer has nexus with the State of Illinois is extremely fact-specific. Such a determination can be made only in the context of an audit where a Department auditor has access to all relevant facts and information. However, we can provide you general information regarding income tax nexus with the state.

Section 201 of the Illinois Income Tax Act (IITA), 35 ILCS 5/201 imposes a tax measured by net income on corporations for the privilege of earning or receiving income in this State. The Due Process and Commerce Clauses of the Federal Constitution limit the power of states to subject foreign corporations to tax. The Due Process Clause requires that there be some minimum connection between a state and the person, property, or transaction it seeks to tax (Quill Corp. v. North Dakota, 504 U.S. 298, 112 S. Ct. 1904 (1992)). Similarly, the Commerce Clause requires that the tax be applied to an activity with a substantial nexus to the taxing state. Id. Where any part of a foreign corporation's income is allocable to Illinois in accordance with the provisions of Article 3 of the IITA, Illinois can demonstrate the connection or nexus necessary to subject a foreign corporation to tax. Therefore, unless protected by Public Law 86-272, a foreign corporation is liable for Illinois income tax where any part of its income is allocated to Illinois. Furthermore, under regulations promulgated by the Department which interpret the foregoing principles of law, Illinois has adopted the "Joyce" rule regarding the establishment of nexus in the case of separate members of a unitary business group. Specifically, this rule provides

f) Application of the Joyce rule. In determining whether the activity of a nonresident taxpayer conducted in this State is sufficient to create nexus for application of Illinois income or replacement tax, the principles established in Appeal of Joyce, Inc., Cal. St. Bd. Of Equal. (11/23/66), commonly known as the "Joyce rule", shall apply. Only activity conducted by or on behalf of the nonresident taxpayer shall be considered for this purpose. Because the income of a partnership, a Subchapter S corporation or any other pass-through entity is treated as income of the owners, activity of a pass-through entity is conducted on behalf of its owners. Activity conducted by any other person, whether or not affiliated with the nonresident taxpayer, shall not be attributed to the taxpayer, unless the other person was acting in a representative capacity on behalf of the taxpayer.

Your correspondence does not state the type of business in which either Florida Corporation A or B is engaged or whether the two corporations comprise a unitary business group. The duties of the Illinois employee of Corporation B are also not disclosed. We take your characterization as "Florida Corporation A" and "Florida Corporation B" to mean that these businesses were incorporated in the state of Florida. We also infer from your reference to Florida Corporation A having its inventory in Wisconsin that Florida Corporation A is in the business of selling tangible personal property.

Assuming that Florida Corporation A has no other connection with the State of Illinois, the fact that it processes the payroll for one Illinois-based employee of Florida Corporation B as a pure matter of administrative convenience would not alone cause Florida Corporation A to have income tax nexus with the State of Illinois. There is no information given which establishes that Florida Corporation B's Illinois-based employee performs any services in a representative capacity for Florida Corporation A.

IITA Section 502(a) explains Illinois income tax filing requirements:

- (a) In general. A return with respect to the taxes imposed by this Act shall be made for any taxable year:
 - (1) For which such person is liable for a tax imposed by this Act, or
 - (2) In the case of a resident or in the case of a corporation which is qualified to do business in this State, for which such person is required to make a federal income

tax return, regardless of whether such person is liable for a tax imposed by this Act. However, this paragraph shall not require a resident to make a return if such person has an Illinois base income of the basic amount in Section 204(b) or less and is either claimed as a dependent on another person's tax return under the Internal Revenue Code of 1986, or is claimed as a dependent on another person's tax return under this Act.

As stated above, this is a GIL which does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you wish to obtain a PLR which will bind the Department with respect to the application of the law to specific facts, please submit a request conforming to the requirements of 2 Ill. Adm. Code Part 1200.

Sincerely yours,

Jackson E. Donley,
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